



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,635	08/28/2003	Gregory J. Mesaros	GEDP111USA	7726
23623	7590	09/21/2009		
TUROCY & WATSON, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114			EXAMINER ALLEN, WILLIAM J	
			ART UNIT	PAPER NUMBER
			3625	
			NOTIFICATION DATE	DELIVERY MODE
			09/21/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket1@thepatentattorneys.com

hholmes@thepatentattorneys.com

lpasterchek@thepatentattorneys.com

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

7
8 *Ex parte* GREGORY J. MESAROS
9

10
11 Appeal 2009-001883
12 Application 10/650,635
13 Technology Center 3600
14

15
16 Decided: September 18, 2009
17
18

19
20 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and BIBHU R.
21 MOHANTY, *Administrative Patent Judges*.

22
23 CRAWFORD, *Administrative Patent Judge*.
24

25
26 DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-2, 4-20, and 34-42. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented systems and methods for utilizing a volume pricing curve in conjunction with multiple suppliers (Spec. 1:9-11).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. An electronic multiple supplier system for transacting business comprising:

a central connection component that provides a virtual forum to facilitate electronic communication between buyers and suppliers; and

at least one remote computer connected to the central connection component *via* a network, at least one buyer employs the at least one computer to request, retrieve, and accept online bids that include a price curve for a product from bidding suppliers, the price curve specifying a unit price in tiers based on the total volume purchased,

the virtual forum displays in real time current low bids at each tier as the bids are retrieved.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Muftic	US 5,850,442	Dec. 15, 1998
Gellman	US 2002/0035536 A1	Mar. 21, 2002
Lee	US 2002/0065762 A1	May 30, 2002
Iribarren	US 2002/0065769 A1	May 30, 2002
Abeshouse	US 2002/0099643 A1	Jul. 25, 2002
Eso	US 2003/0028473 A1	Feb. 6, 2003
Hao	US 2003/0041002 A1	Feb. 27, 2003
Ginsberg	US 2003/0055774 A1	Mar. 20, 2003
Cao	US 2003/0195832 A1	Oct. 16, 2003

1 K. Sivakumar et al., *Price Match guarantees: Rationale,*
2 *implementation, and consumer response*, 4 Pricing Strategy &
3 Practice, 4 (1996) (hereinafter “892W”).
4

5 *Magna Cash and CyberSource Partner to Expand Online Payment*
6 *Options*, PR Newswire, 1 (Jan. 2001) (hereinafter “892U”).
7

8 Wendy Tanaka, *As other companies crumble, Ecount carves out a*
9 *niche in online-payment services*, Knight Ridder Tribune News
10 Service, 1 (Feb. 2002) (hereinafter “892V”).

11 The Examiner rejected claims 1-2, 5-6, 8, 11, 13, 34-37, and 40-41
12 under 35 U.S.C. § 103(a) as being unpatentable over Irribarren and Eso;
13 claims 4 and 9 under 35 U.S.C. § 103(a) as being unpatentable over
14 Irribarren, Eso, and Abeshouse; claim 7 under 35 U.S.C. § 103(a) as being
15 unpatentable over Irribarren, Eso, and Muftic; claims 10 and 42 under 35
16 U.S.C. § 103(a) as being unpatentable over Irribarren, Eso, and Gellman;
17 claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Irribarren,
18 Eso, and Lee; claim 14 under 35 U.S.C. § 103(a) as being unpatentable over
19 Irribarren, Eso, and Hao; claims 15 and 16 under 35 U.S.C. § 103(a) as
20 being unpatentable over Irribarren, Eso, and Ginsberg; claim 17 under 35
21 U.S.C. § 103(a) as being unpatentable over Irribarren, Eso, Ginsberg, and
22 892W; claims 18-19 under 35 U.S.C. § 103(a) as being unpatentable over
23 Irribarren, Eso, Ginsberg, 892W, and 892U; claim 20 under 35 U.S.C. §
24 103(a) as being unpatentable over Irribarren, Eso, Ginsberg, 892W, and
25 892V; and claims 38-39 under 35 U.S.C. § 103(a) as being unpatentable
26 over Irribarren, Eso, and Cao.

27 We REVERSE.
28

ISSUES

Did the Appellant show the Examiner erred in combining Irribarren and Eso to render obvious the subject matter of independent claims 1, 8, 22, and 30, because the Examiner has not provided an adequate reason for modifying the unmet demand system of Irribarren to include the price curves of Eso?

FINDINGS OF FACT

Specification

Appellant invented systems and methods for utilizing a volume pricing curve in conjunction with multiple suppliers (Spec. 1:9-11).

Irribarren

Irribarren discloses a method and apparatus for processing unmet demand between vendors and buyers in a bidding system ([0002]).

Prior art systems lack the ability to resolve relatively small disparities in price between a buyer and a seller ([0010]).

For example, in certain trade scenarios, the vendors have an asking price per product of \$100, while the buyers have an asking price per product of \$99. Realistically, in a negotiation process in which the vendors and sellers are face to face in a negotiation session, such a small amount of disparity in price could be resolved through a compromise by both or either parties. For example, the parties could split the difference and settle on a price of \$99.50/product. Accordingly, the prior art systems consider the

1 price disparity of \$0.01, \$1, and \$1000 between the vendors and the buyers
2 equally, as the negotiation process is completed without a committed
3 purchase ([0051]).

4 Irribarren solves this problem by generating a new bidding cycle in
5 the on-line auction upon determining that the difference is within a pre-
6 agreed range ([0052]).

7
8 *Eso*

9 Eso discloses one or more suppliers submitting price curves for
10 commodities indicating the price charged as a function of the purchased
11 quantity ([0030]).

12
13 PRINCIPLES OF LAW

14 *Obviousness*

15 Rejections on obviousness grounds cannot be sustained by mere
16 conclusory statements; instead, there must be some articulated reasoning
17 with some rational underpinning to support the legal conclusion of
18 obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

19
20 ANALYSIS

21 We are persuaded of error on the part of the Examiner by Appellant's
22 argument that the Examiner did not provide an adequate reason for
23 modifying the unmet demand system of Irribarren to include the price curves
24 of Eso (App. Br. 11-13). The Examiner has asserted that it would have been
25 obvious to incorporate the price curve from Eso into the unmet demand

1 system of Irribarren to “provide quality evaluation of bids according to
2 requirements specified by a requester in complex settings” (Ex. Ans. 4-5).

3 Irribarren is a single price based system (i.e., one product, one price)
4 which determines whether the vendor’s price and the buyer’s price in a
5 failed bidding cycle are within a pre-agreed range so as to initiate a new
6 bidding cycle. The Examiner has not clearly set forth what sort of
7 requirements a requester would set forth to make the system of Irribarren a
8 “complex setting,” and how the price curves of Eso would facilitate quality
9 evaluation of bids in that complex setting. Indeed, adding price curves to the
10 system of Irribarren would appear to make it even more difficult to evaluate
11 bids, as it is not clear what criteria would be used to determine whether two
12 price curves were within the pre-agreed range.

13 Accordingly, because the Examiner has not set forth an articulated
14 reason with a rational underpinning for modifying the unmet demand system
15 of Irribarren to include the price curves of Eso, we are constrained to reverse
16 all the rejections on appeal. *See In re Kahn*, 441 F.3d at 988.

17 18 CONCLUSION OF LAW

19 On the record before us, Appellant has shown that the Examiner erred
20 in rejecting claims 1-2, 4-20, and 34-42.

DECISION

The decision of the Examiner to reject claims 1-2, 4-20, and 34-42 is reversed.

REVERSED

hh

TUROC & WATSON, LLP
127 Public Square
57th Floor, Key Tower
CLEVELAND, OH 44114